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THE CBE GROUP, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 EVELINE HENRIETTE
ROSENBERRY,

13 Plaintiff,

14 v.

15 THE CBE GROUP, INC., an Iowa
16 corporation,

17 Defendant.

CASE NO. C07-05165-JW-PVT

**ANSWER TO FIRST AMENDED
COMPLAINT**

JURY TRIAL DEMANDED

18
19
20 Defendant THE CBE GROUP, INC., ("CBE GROUP") in answer to the First
21 Amended Complaint of plaintiff EVELINE HENRIETTE ROSENBERRY on file herein and
22 to each and every cause of action contained therein, admits, denies and alleges as follows.

23 1. Answering the allegations contained in paragraph 1 of the First Amended
24 Complaint, defendant admits that this action purports to arise under the Fair Debt Collection
25 Practices Act, 15 USC § 1692, et seq., and the Rosenthal Fair Debt Collection Practices Act,
26 California Civil Code §§ 1788 et seq., but denies plaintiff has any valid claim against it
27 thereunder, and further denies the remaining allegations contained in paragraph 1.
28

2. Answering the allegations contained in paragraph 2 of the First Amended Complaint, the congressional findings and declaration of purpose as set forth in 15 USC § 1692 are self-explanatory, and further denies that plaintiff has any valid claim against it thereunder.

3. Answering the allegations contained in paragraph 3 of the First Amended Complaint, defendant admits that jurisdiction of this court is invoked under 15 USC § 1692k(d), 28 USC § 1337, 28 USC § 1367, and 28 USC §§ 2201 and 2202. As to the remaining allegations, defendant lacks information and belief sufficient to admit or deny and on that basis denies each and every remaining allegation contained in paragraph 3.

4. Answering the allegations contained in paragraph 4 of the First Amended Complaint, defendant admits that this is an action under the Fair Debt Collection Practices Act, 15 USC § 1692 et seq., but denies that plaintiff has any valid claim against it thereunder.

5. Answering the allegations contained in paragraph 5 of the First Amended Complaint, defendant admits that venue in this judicial district is invoked under 28 USC § 1391 (b) and 15 USC § 1692k(d). As to the remaining allegations, defendant lacks information and belief sufficient to admit or deny and on that basis denies each and every remaining allegation contained in paragraph 5.

6. Answering the allegations contained in paragraph 6 of the First Amended Complaint, defendant lacks information and belief sufficient to admit or deny and on that basis denies each and every allegation contained in paragraph 6.

7. Answering the allegations contained in paragraph 7 of the First Amended Complaint, defendant lacks information and belief sufficient to admit or deny and on that basis denies each and every allegation contained in paragraph 7.

8. Answering the allegations contained in paragraph 8 of the First Amended Complaint, defendant admits that it is an Iowa corporation engaged in the business of collecting debts in the State of California, and has its principal place of business at 131 Tower Park, Suite 100, Waterloo, Iowa, 50701-9374. Defendant further admits that its principal business is the collection of debts and in the performance of such operations, uses the mails

1 and telephone. Defendant further admits that it has at times acted as a "debt collector" within
2 the meaning of 15 USC § 1692a(6), and California Civil Code § 1788.2 (c). Defendant
3 denies each and every remaining allegation contained in paragraph 8.

4 9. Answering the allegations contained in paragraph 9 of the First Amended
5 Complaint, defendant lacks information and belief sufficient to admit or deny them and on
6 that basis denies each and every allegation contained in paragraph 9.

7 10. Answering the allegations contained in paragraph 10 of the First Amended
8 Complaint, defendant admits that the alleged debts were assigned to defendant for collection
9 from plaintiff. As to the remaining allegations, defendant denies each and every allegation.

10 11. Answering the allegations contained in paragraph 11 of the First Amended
11 Complaint, defendant admits that it sent a letter to plaintiff, a copy of which is attached as
12 Exhibit "1" to the First Amended Complaint. As to the remaining allegations of paragraph
13 11, defendant lacks information and belief sufficient to admit or deny, and on that basis
14 denies each and every remaining allegation contained in paragraph 11.

15 12. Answering the allegations contained in paragraph 12 of the First Amended
16 Complaint, defendant admits the allegations of paragraph 12 of the First Amended Complaint.

17 13. Answering the allegations contained in paragraph 13 of the First Amended
18 Complaint, defendant admits the allegations of paragraph 13 of the First Amended Complaint.

19 14. Answering the allegations contained in paragraph 14 of the First Amended
20 Complaint, defendant admits the allegations of paragraph 14 of the First Amended Complaint.

21 15. Answering the allegations contained in paragraph 15 of the First Amended
22 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
23 basis denies each and every allegation contained in paragraph 15.

24 16. Answering the allegations contained in paragraph 16 of the First Amended
25 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
26 basis denies each and every allegation contained in paragraph 16.

27 17. Answering the allegations contained in paragraph 17 of the First Amended
28 Complaint, defendant admits that on or about November 6, 2006, a letter was received

1 indicating that it was from plaintiff, a copy of which appears to be attached as Exhibit "2" to
2 the First Amended Complaint. As to the remaining allegations of paragraph 17, defendant
3 lacks information and belief sufficient to admit or deny said allegations, and on that basis
4 denies each and every remaining allegation contained in paragraph 17.

5 18. Answering the allegations contained in paragraph 18 of the First Amended
6 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
7 basis denies each and every allegation contained in paragraph 18.

8 19. Answering the allegations contained in paragraph 19 of the First Amended
9 Complaint, defendant admits that it sent a letter to plaintiff, a copy of which is attached as
10 Exhibit "4" to the First Amended Complaint. As to the remaining allegations of paragraph
11 19, defendant lacks information and belief sufficient to admit or deny, and on that basis
12 denies each and every remaining allegation contained in paragraph 19.

13 20. Answering the allegations contained in paragraph 20 of the First Amended
14 Complaint, defendant admits the allegations of paragraph 20 of the First Amended Complaint.

15 21. Answering the allegations contained in paragraph 21 of the First Amended
16 Complaint, defendant admits the allegations of paragraph 21 of the First Amended Complaint

17 22. Answering the allegations contained in paragraph 22 of the First Amended
18 Complaint, defendant admits the allegations of paragraph 22 of the First Amended Complaint

19 23. Answering the allegations contained in paragraph 23 of the First Amended
20 Complaint, defendant admits that its representatives made telephone calls to what was
21 believed to be plaintiff's residence. As to the remaining allegations of paragraph 23,
22 defendant lacks information and belief sufficient to admit or deny, and on that basis, denies
23 each and every remaining allegation contained in paragraph 23.

24 24. Answering the allegations contained in paragraph 24 of the First Amended
25 Complaint, defendant denies each and every allegation contained in paragraph 24 of the First
26 Amended Complaint.

27 25. Answering the allegations contained in paragraph 25 of the First Amended
28 Complaint, defendant admits that on or about November 17, 2006, a representative of

1 defendant left a message on what was believed to be plaintiff's residence answering machine.
2 As to the remaining allegations of paragraph 25, defendant lacks information and belief
3 sufficient to admit or deny such allegations, and on that basis denies each and every
4 remaining allegation contained in paragraph 25.

5 26. Answering the allegations contained in paragraph 26 of the First Amended
6 Complaint, defendant admits that on or about November 18, 2006, a message was left on
7 what was believed to be plaintiff's residence answering machine. As to the remaining
8 allegations of paragraph 26, defendant lacks information and belief sufficient to admit or deny
9 such allegations, and on that basis denies each and every remaining allegation contained in
10 paragraph 26.

11 27. Answering the allegations contained in paragraph 27 of the First Amended
12 Complaint, defendant admits that on or about November 20, 2006, a message was left on
13 what was believed to be plaintiff's residence answering machine. As to the remaining
14 allegations of paragraph 27, defendant lacks information and belief sufficient to admit or deny
15 such allegations, and on that basis denies each and every remaining allegation contained in
16 paragraph 27.

17 28. Answering the allegations contained in paragraph 28 of the First Amended
18 Complaint, defendant admits that on or about November 20, 2006, a message was left on
19 what was believed to be plaintiff's residence answering machine. As to the remaining
20 allegations of paragraph 28, defendant lacks information and belief sufficient to admit or deny
21 such allegations, and on that basis denies each and every remaining allegation contained in
22 paragraph 28.

23 29. Answering the allegations contained in paragraph 29 of the First Amended
24 Complaint, defendant admits that it sent a letter to plaintiff, a copy of which is attached as
25 Exhibit "5" to the First Amended Complaint. As to the remaining allegation of paragraph 29,
26 defendant lacks information and belief sufficient to admit or deny, and on that basis denies
27 each and every remaining allegation contained in paragraph 29.

28

1 30. Answering the allegations contained in paragraph 30 of the First Amended
2 Complaint, defendant admits the allegations of paragraph 30 of the First Amended Complaint.

3 31. Answering the allegations contained in paragraph 31 of the First Amended
4 Complaint, defendant admits the allegations of paragraph 31 of the First Amended Complaint.

5 32. Answering the allegations contained in paragraph 32 of the First Amended
6 Complaint, defendant admits that on or about November 21, 2006, a message was left on
7 what was believed to be plaintiff's residence answering machine. As to the remaining
8 allegations of paragraph 32, defendant lacks information and belief sufficient to admit or deny
9 such allegations, and on that basis denies each and every remaining allegation contained in
10 paragraph 32.

11 33. Answering the allegations contained in paragraph 33 of the First Amended
12 Complaint, defendant admits that on or about November 21, 2006, a message was left on
13 what was believed to be plaintiff's residence answering machine. As to the remaining
14 allegations of paragraph 33, defendant lacks information and belief sufficient to admit or deny
15 such allegations, and on that basis denies each and every remaining allegation contained in
16 paragraph 33.

17 34. Answering the allegations contained in paragraph 34 of the First Amended
18 Complaint, defendant admits that on or about November 22, 2006, a representative of
19 defendant left a message on what was believed to be plaintiff's residence answering machine.
20 As to the remaining allegations of paragraph 34, defendant lacks information and belief
21 sufficient to admit or deny such allegations, and on that basis denies each and every
22 remaining allegation contained in paragraph 34.

23 35. Answering the allegations contained in paragraph 35 of the First Amended
24 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
25 basis denies each and every allegation contained in paragraph 35.

26 36. Answering the allegations contained in paragraph 36 of the First Amended
27 Complaint, defendant admits that on or about November 24, 2006, a representative of
28 defendant left a message on what was believed to be plaintiff's residence answering machine.

1 As to the remaining allegations of paragraph 36, defendant lacks information and belief
2 sufficient to admit or deny such allegations, and on that basis denies each and every
3 remaining allegation contained in paragraph 36.

4 37. Answering the allegations contained in paragraph 37 of the First Amended
5 Complaint, defendant admits that on or about November 27, 2006, a message was left on
6 what was believed to be plaintiff's residence answering machine. As to the remaining
7 allegations of paragraph 37, defendant lacks information and belief sufficient to admit or deny
8 such allegations, and on that basis denies each and every remaining allegation contained in
9 paragraph 37.

10 38. Answering the allegations contained in paragraph 38 of the First Amended
11 Complaint, defendant admits that on or about November 27, 2006, a message was left on
12 what was believed to be plaintiff's residence answering machine. As to the remaining
13 allegations of paragraph 38, defendant lacks information and belief sufficient to admit or deny
14 such allegations, and on that basis denies each and every remaining allegation contained in
15 paragraph 38.

16 39. Answering the allegations contained in paragraph 39 of the First Amended
17 Complaint, defendant admits that on or about November 29, 2006, a message was left on
18 what was believed to be plaintiff's residence answering machine. As to the remaining
19 allegations of paragraph 39, defendant lacks information and belief sufficient to admit or deny
20 such allegations, and on that basis denies each and every remaining allegation contained in
21 paragraph 39.

22 40. Answering the allegations contained in paragraph 40 of the First Amended
23 Complaint, defendant admits that on or about November 29, 2006, a message was left on
24 what was believed to be plaintiff's residence answering machine. As to the remaining
25 allegations of paragraph 40, defendant lacks information and belief sufficient to admit or deny
26 such allegations, and on that basis denies each and every remaining allegation contained in
27 paragraph 40.
28

1 41. Answering the allegations contained in paragraph 41 of the First Amended
2 Complaint, defendant admits that on or about November 29, 2006, a message was left on
3 what was believed to be plaintiff's residence answering machine. As to the remaining
4 allegations of paragraph 41, defendant lacks information and belief sufficient to admit or deny
5 such allegations, and on that basis denies each and every remaining allegation contained in
6 paragraph 41.

7 42. Answering the allegations contained in paragraph 42 of the First Amended
8 Complaint, defendant admits that on or about November 30, 2006, a message was left on
9 what was believed to be plaintiff's residence answering machine. As to the remaining
10 allegations of paragraph 42, defendant lacks information and belief sufficient to admit or deny
11 such allegations, and on that basis denies each and every remaining allegation contained in
12 paragraph 42.

13 43. Answering the allegations contained in paragraph 43 of the First Amended
14 Complaint, defendant admits that on or about November 30, 2006, a message was left on
15 what was believed to be plaintiff's residence answering machine. As to the remaining
16 allegations of paragraph 43, defendant lacks information and belief sufficient to admit or deny
17 such allegations, and on that basis denies each and every remaining allegation contained in
18 paragraph 43.

19 44. Answering the allegations contained in paragraph 44 of the First Amended
20 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
21 basis denies each and every allegation contained in paragraph 44.

22 45. Answering the allegations contained in paragraph 45 of the First Amended
23 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
24 basis denies each and every allegation contained in paragraph 45.

25 46. Answering the allegations contained in paragraph 46 of the First Amended
26 Complaint, defendant admits that on or about December 1, 2006, a representative of
27 defendant left a message on what was believed to be plaintiff's residence answering machine.
28 As to the remaining allegations of paragraph 46, defendant lacks information and belief

1 sufficient to admit or deny such allegations, and on that basis denies each and every
2 remaining allegation contained in paragraph 46.

3 47. Answering the allegations contained in paragraph 47 of the First Amended
4 Complaint, defendant admits that on or about December 2, 2006, a message was left on what
5 was believed to be plaintiff's residence answering machine. As to the remaining allegations
6 of paragraph 47, defendant lacks information and belief sufficient to admit or deny such
7 allegations, and on that basis denies each and every remaining allegation contained in
8 paragraph 47.

9 48. Answering the allegations contained in paragraph 48 of the First Amended
10 Complaint, defendant admits that on or about December 4, 2006, a message was left on what
11 was believed to be plaintiff's residence answering machine. As to the remaining allegations
12 of paragraph 48, defendant lacks information and belief sufficient to admit or deny such
13 allegations, and on that basis denies each and every remaining allegation contained in
14 paragraph 48.

15 49. Answering the allegations contained in paragraph 49 of the First Amended
16 Complaint, defendant admits that on or about December 5, 2006, a letter was received
17 indicating that it was from plaintiff, a copy of which appears to be attached as Exhibit "6" to
18 the First Amended Complaint. As to the remaining allegations of paragraph 49, defendant
19 lacks information and belief sufficient to admit or deny said allegations, and on that basis
20 denies each and every remaining allegation contained in paragraph 49.

21 50. Answering the allegations contained in paragraph 50 of the First Amended
22 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
23 basis denies each and every allegation contained in paragraph 50.

24 51. Answering the allegations contained in paragraph 51 of the First Amended
25 Complaint, defendant admits that on or about December 12, 2006, a message was left on what
26 was believed to be plaintiff's residence answering machine. As to the remaining allegations
27 of paragraph 51, defendant lacks information and belief sufficient to admit or deny such
28 allegations, and on that basis denies each and every remaining allegation contained in

1 paragraph 51.

2 52. Answering the allegations contained in paragraph 52 of the First Amended
3 Complaint, defendant admits that on or about December 13, 2006, a message was left on what
4 was believed to be plaintiff's residence answering machine. As to the remaining allegations
5 of paragraph 52, defendant lacks information and belief sufficient to admit or deny such
6 allegations, and on that basis denies each and every remaining allegation contained in
7 paragraph 52.

8 53. Answering the allegations contained in paragraph 53 of the First Amended
9 Complaint, defendant admits that on or about December 14, 2006, a message was left on what
10 was believed to be plaintiff's residence answering machine. As to the remaining allegations
11 of paragraph 53, defendant lacks information and belief sufficient to admit or deny such
12 allegations, and on that basis denies each and every remaining allegation contained in
13 paragraph 53.

14 54. Answering the allegations contained in paragraph 54 of the First Amended
15 Complaint, defendant admits that on or about December 18, 2006, a message was left on what
16 was believed to be plaintiff's residence answering machine. As to the remaining allegations
17 of paragraph 54, defendant lacks information and belief sufficient to admit or deny such
18 allegations, and on that basis denies each and every remaining allegation contained in
19 paragraph 54.

20 55. Answering the allegations contained in paragraph 55 of the First Amended
21 Complaint, defendant admits that on or about December 19, 2006, a message was left on what
22 was believed to be plaintiff's residence answering machine. As to the remaining allegations
23 of paragraph 55, defendant lacks information and belief sufficient to admit or deny such
24 allegations, and on that basis denies each and every remaining allegation contained in
25 paragraph 55.

26 56. Answering the allegations contained in paragraph 56 of the First Amended
27 Complaint, defendant admits that on or about December 20, 2006, a representative of
28 defendant left a message on what was believed to be plaintiff's residence answering machine.

1 As to the remaining allegations of paragraph 56, defendant lacks information and belief
2 sufficient to admit or deny such allegations, and on that basis denies each and every
3 remaining allegation contained in paragraph 56.

4 57. Answering the allegations contained in paragraph 57 of the First Amended
5 Complaint, defendant admits that on or about December 21, 2006, a message was left on what
6 was believed to be plaintiff's residence answering machine. As to the remaining allegations
7 of paragraph 57, defendant lacks information and belief sufficient to admit or deny such
8 allegations, and on that basis denies each and every remaining allegation contained in
9 paragraph 57.

10 58. Answering the allegations contained in paragraph 58 of the First Amended
11 Complaint, defendant admits that on or about December 21, 2006, a message was left on what
12 was believed to be plaintiff's residence answering machine. As to the remaining allegations
13 of paragraph 58, defendant lacks information and belief sufficient to admit or deny such
14 allegations, and on that basis denies each and every remaining allegation contained in
15 paragraph 58.

16 59. Answering the allegations contained in paragraph 59 of the First Amended
17 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
18 basis denies each and every allegation contained in paragraph 59.

19 60. Answering the allegations contained in paragraph 60 of the First Amended
20 Complaint, defendant admits that on or about December 27, 2006, a representative of
21 defendant left a message on what was believed to be plaintiff's residence answering machine.
22 As to the remaining allegations of paragraph 60, defendant lacks information and belief
23 sufficient to admit or deny such allegations, and on that basis denies each and every
24 remaining allegation contained in paragraph 60.

25 61. Answering the allegations contained in paragraph 61 of the First Amended
26 Complaint, defendant admits that on or about December 28, 2006, a representative of
27 defendant left a message on what was believed to be plaintiff's residence answering machine.
28 As to the remaining allegations of paragraph 61, defendant lacks information and belief

1 sufficient to admit or deny such allegations, and on that basis denies each and every
2 remaining allegation contained in paragraph 61.

3 62. Answering the allegations contained in paragraph 62 of the First Amended
4 Complaint, defendant admits that it sent a letter to plaintiff, a copy of which is attached as
5 Exhibit "8" to the First Amended Complaint. As to the remaining allegations of paragraph
6 62, defendant lacks information and belief sufficient to admit or deny, and on that basis
7 denies each and every remaining allegation contained in paragraph 62.

8 63. Answering the allegations contained in paragraph 63 of the First Amended
9 Complaint, defendant admits the allegations of paragraph 63 of the First Amended Complaint.

10 64. Answering the allegations contained in paragraph 64 of the First Amended
11 Complaint, defendant admits the allegations of paragraph 64 of the First Amended Complaint.

12 65. Answering the allegations contained in paragraph 65 of the First Amended
13 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
14 basis denies each and every allegation contained in paragraph 65.

15 66. Answering the allegations contained in paragraph 66 of the First Amended
16 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
17 basis denies each and every allegation contained in paragraph 66.

18 67. Answering the allegations contained in paragraph 67 of the First Amended
19 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
20 basis denies each and every allegation contained in paragraph 67.

21 68. Answering the allegations contained in paragraph 68 of the First Amended
22 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
23 basis denies each and every allegation contained in paragraph 68.

24 69. Answering the allegations contained in paragraph 69 of the First Amended
25 Complaint, defendant admits the allegations of paragraph 69 of the First Amended Complaint.

26 70. Answering the allegations contained in paragraph 70 of the First Amended
27 Complaint, defendant admits the allegations of paragraph 70 of the First Amended Complaint.
28

1 71. Answering the allegations contained in paragraph 71 of the First Amended
2 Complaint, defendant admits the allegations of paragraph 71 of the First Amended Complaint.

3 72. Answering the allegations contained in paragraph 72 of the First Amended
4 Complaint, defendant admits the allegations of paragraph 72 of the First Amended Complaint.

5 73. Answering the allegations contained in paragraph 73 of the First Amended
6 Complaint, defendant admits the allegations of paragraph 73 of the First Amended Complaint.

7 74. Answering the allegations contained in paragraph 74 of the First Amended
8 Complaint, defendant admits the allegations of paragraph 74 of the First Amended Complaint.

9 75. Answering the allegations contained in paragraph 75 of the First Amended
10 Complaint, defendant denies each and every allegation contained in paragraph 75 of the First
11 Amended Complaint.

12 76. Answering the allegations contained in paragraph 76 of the First Amended
13 Complaint, defendant denies each and every allegation contained in paragraph 76 of the First
14 Amended Complaint.

15 77. Answering the allegations contained in paragraph 77 of the First Amended
16 Complaint, defendant denies each and every allegation contained in paragraph 77 of the First
17 Amended Complaint.

18 78. Answering the allegations contained in paragraph 78 of the First Amended
19 Complaint, defendant denies each and every allegation contained in paragraph 78 of the First
20 Amended Complaint.

21 79. Answering the allegations contained in paragraph 79 of the First Amended
22 Complaint, defendant admits that plaintiff has purportedly brought this action pursuant to the
23 Federal Fair Debt Collection Practices Act, but denies that plaintiff has any valid claim
24 against it thereunder. As to the remaining allegations of such paragraph, defendant lacks
25 information and belief sufficient to admit or deny said allegations, and on that basis, denies
26 each and every remaining allegation in said paragraph.

27 80. Answering the allegations contained in paragraph 80 of the First Amended
28 Complaint, defendant repeats, realleges and incorporates by reference paragraphs 1 through

1 78 of this answer.

2 81. Answering the allegations contained in paragraph 81 of the First Amended
3 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
4 basis denies each and every allegation contained in paragraph 81.

5 82. Answering the allegations contained in paragraph 82 of the First Amended
6 Complaint, defendant admits that it has at times acted as a "debt collector" within the
7 meaning of 15 U.S.C. § 1692a(6). As to the remaining allegations, defendant denies such
8 allegations.

9 83. Answering the allegations contained in paragraph 83 of the First Amended
10 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
11 basis denies each and every allegation contained in paragraph 83.

12 84. Answering the allegations contained in paragraph 84 of the First Amended
13 Complaint, defendant denies each and every allegation contained in paragraph 84 (a) and (b).
14 As to the remaining allegations of paragraph 84, defendant lacks information and belief to
15 admit or deny such allegations, and on that basis denies each and every remaining allegation
16 contained in paragraph 84.

17 85. Answering the allegations contained in paragraph 85 of the First Amended
18 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
19 basis denies each and every allegation contained in paragraph 85.

20 86. Answering the allegations contained in paragraph 86 of the First Amended
21 Complaint, defendant denies each and every allegation contained in said paragraph.

22 87. Answering the allegations contained in paragraph 87 of the First Amended
23 Complaint, defendant denies each and every allegation contained in said paragraph.

24 88. Answering the allegations contained in paragraph 88 of the First Amended
25 Complaint, defendant admits that plaintiff has purportedly brought this action pursuant to the
26 Rosenthal Fair Debt Collection Practices Act, California Civil Code §§ 1788 through
27 1788.33, but denies that plaintiff has any valid claim against it thereunder. As to the
28 remaining allegations of such paragraph, defendant lacks information and belief sufficient to

1 admit or deny said allegations, and on that basis, denies each and every remaining allegation
2 in said paragraph.

3 89. Answering the allegations contained in paragraph 89 of the First Amended
4 Complaint, defendant repeats, realleges and incorporates by reference paragraph 1 through 87
5 of this answer.

6 90. Answering the allegations contained in paragraph 90 of the First Amended
7 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
8 basis denies each and every allegation contained in paragraph 90.

9 91. Answering the allegations contained in paragraph 91 of the First Amended
10 Complaint, defendant admits that it has at times acted as a "debt collector" within the
11 meaning of California Civil Code section 1788.2(c). As to the remaining allegations,
12 defendant denies such allegations.

13 92. Answering the allegations contained in paragraph 92 of the First Amended
14 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
15 basis denies each and every allegation contained in paragraph 92.

16 93. Answering the allegations contained in paragraph 93 of the First Amended
17 Complaint, defendant denies each and every allegation contained in paragraph 93 (a) and (b).
18 As to the remaining allegations of paragraph 93, defendant lacks information and belief to
19 admit or deny such allegations, and on that basis denies each and every remaining allegation
20 contained in paragraph 93.

21 94. Answering the allegations contained in paragraph 94 of the First Amended
22 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
23 basis denies each and every allegation contained in paragraph 94.

24 95. Answering the allegations contained in paragraph 95 of the First Amended
25 Complaint, defendant denies each and every allegation contained in said paragraph.

26 96. Answering the allegations contained in paragraph 96 of the First Amended
27 Complaint, defendant denies each and every allegation contained in said paragraph.
28

1 97. Answering the allegations contained in paragraph 97 of the First Amended
2 Complaint, defendant denies each and every allegation contained in said paragraph.

3 98. Answering the allegations contained in paragraph 98 of the First Amended
4 Complaint, defendant denies each and every allegation contained in said paragraph.

5 99. Answering the allegations contained in paragraph 99 of the First Amended
6 Complaint, defendant denies each and every allegation contained in said paragraph.

7 100. Answering the allegations contained in paragraph 100 of the First Amended
8 Complaint, the provisions of California Civil Code § 1788.32 are self-explanatory. However,
9 defendant denies that plaintiff has any valid claim against it under such statute, and further
10 denies the remaining allegations contained in paragraph 100.

11 101. Answering the allegations contained in paragraph 101 of the First Amended
12 Complaint, defendant admits that plaintiff has purportedly brought a claim for relief against
13 defendant for invasion of privacy, but denies that plaintiff has any valid claim against it
14 thereunder. As to the remaining allegations of paragraph 101, defendant lacks information
15 and belief sufficient to admit or deny said allegations, and on that basis denies each and every
16 remaining allegation contained in said paragraph.

17 102. Answering the allegations contained in paragraph 102 of the First Amended
18 Complaint, defendant repeats, realleges and incorporates by reference paragraph 1 through
19 100 of this answer.

20 103. Answering the allegations contained in paragraph 103 of the First Amended
21 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
22 basis denies each and every allegation contained in paragraph 103.

23 104. Answering the allegations contained in paragraph 104 of the First Amended
24 Complaint, defendant denies each and every allegation contained in said paragraph.

25 105. Answering the allegations contained in paragraph 105 of the First Amended
26 Complaint, defendant denies each and every allegation contained in said paragraph.

27 106. Answering the allegations contained in paragraph 106 of the First Amended
28 Complaint, defendant denies each and every allegation contained in said paragraph.

1 107. Answering the allegations contained in paragraph 107 of the First Amended
2 Complaint, defendant denies each and every allegation contained in said paragraph.

3 108. Answering the allegations contained in paragraph 108 of the First Amended
4 Complaint, defendant denies each and every allegation contained in said paragraph.

5 109. Answering the allegations contained in paragraph 109 of the First Amended
6 Complaint, defendant denies each and every allegation contained in said paragraph.

7 110. Answering the allegations contained in paragraph 110 of the First Amended
8 Complaint, defendant admits that plaintiff has purportedly brought a claim for relief against
9 defendant for negligence, but denies that plaintiff has any valid claim against it thereunder.
10 As to the remaining allegations of paragraph 110, defendant lacks information and belief
11 sufficient to admit or deny said allegations, and on that basis denies each and every remaining
12 allegation contained in said paragraph.

13 111. Answering the allegations contained in paragraph 111 of the First Amended
14 Complaint, defendant repeats, realleges and incorporates by reference paragraph 1 through
15 109 of this answer.

16 112. Answering the allegations contained in paragraph 112 of the First Amended
17 Complaint, defendant lacks information and belief sufficient to admit or deny and on that
18 basis denies each and every allegation contained in paragraph 112.

19 113. Answering the allegations contained in paragraph 113 of the First Amended
20 Complaint, defendant denies each and every allegation contained in said paragraph.

21 114. Answering the allegations contained in paragraph 114 of the First Amended
22 Complaint, defendant denies each and every allegation contained in said paragraph.

23 115. Answering the allegations contained in paragraph 115 of the First Amended
24 Complaint, defendant denies each and every allegation contained in said paragraph.

25 116. Answering the allegations contained in paragraph 116 of the First Amended
26 Complaint, defendant denies each and every allegation contained in said paragraph.

27 117. Answering the allegations contained in paragraph 101 of the First Amended
28 Complaint, defendant admits that plaintiff has purportedly brought a claim for relief against

1 defendant for "tort-in-se", but denies that plaintiff has any valid claim against it thereunder.
2 As to the remaining allegations of paragraph 117, defendant lacks information and belief
3 sufficient to admit or deny said allegations, and on that basis denies each and every remaining
4 allegation contained in said paragraph.

5 118. Answering the allegations contained in paragraph 118 of the First Amended
6 Complaint, defendant repeats, realleges and incorporates by reference paragraph 1 through
7 116 of this answer.

8 119. Answering the allegations contained in paragraph 119 of the First Amended
9 Complaint, defendant denies each and every allegation contained in said paragraph.

10 120. Answering the allegations contained in paragraph 120 of the First Amended
11 Complaint, defendant denies each and every allegation contained in said paragraph.

12 121. Answering the allegations contained in paragraph 121 of the First Amended
13 Complaint, defendant denies each and every allegation contained in said paragraph.

14 122. Answering the allegations contained in paragraph 122 of the First Amended
15 Complaint, defendant denies each and every allegation contained in said paragraph.

16 123. Answering the allegations contained in paragraph 123 of the First Amended
17 Complaint, defendant denies each and every allegation contained in said paragraph.

18 124. Answering the allegations contained in paragraph 124 of the First Amended
19 Complaint, defendant denies each and every allegation contained in said paragraph.

20 125. Answering the allegations contained in paragraph 125 of the First Amended
21 Complaint, defendant denies each and every allegation contained in said paragraph.

22 As to plaintiff's requests for relief, defendant denies that plaintiff is entitled to any
23 relief whatsoever under her first amended complaint.

24 **AFFIRMATIVE DEFENSES**

25 126. In addition to the foregoing denials, admissions and allegations, and without
26 admission as to burden of proof, defendant asserts the following affirmative defenses.

27 127. AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
28 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF

1 ACTION CONTAINED THEREIN, this answering defendant alleges that said plaintiff fails
2 to state facts sufficient to constitute a cause of action against this answering defendant.

3 128. AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
4 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
5 OF ACTION CONTAINED THEREIN, this answering defendant alleges that any acts or
6 omissions attributable to defendant as alleged in the First Amended Complaint were
7 unintentional and resulted from a bona fide error notwithstanding the maintenance of
8 procedures reasonably adapted to avoid any such error, pursuant to 15 USC § 1692k(c).

9 129. AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
10 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF
11 ACTION CONTAINED THEREIN, this answering defendant alleges that any acts or
12 omissions attributed to defendant were performed in good faith in conformity with advisory
13 opinions of the Federal Trade Commission pursuant to 15 U.S.C. § 1692k(e).

14 130. AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
15 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
16 OF ACTION CONTAINED THEREIN, this answering defendant alleges that to the extent
17 any violation of law occurred, which defendant expressly denies, said violation was not
18 intentional and resulted from a bona fide error notwithstanding the maintenance by defendant
19 of procedures reasonably adopted to avoid any such error.

20 131. AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
21 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF
22 ACTION CONTAINED THEREIN, this answering defendant alleges that all of its actions
23 were taken in good faith and with a reasonable belief that such actions were legal, appropriate
24 and necessary.

25 132. AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
26 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF
27 ACTION CONTAINED THEREIN, this answering defendant alleges that the representations
28 or statements alleged to have been made by defendant were true, accurate at the time made,

1 and/or otherwise were made in good faith and with a reasonable belief as to their truth,
2 validity and accuracy.

3 133. AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
4 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
5 OF ACTION CONTAINED THEREIN, this answering defendant alleges that statutory and
6 common law immunities apply to the acts and/or omissions complained of in the First
7 Amended Complaint.

8 134. AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
9 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
10 OF ACTION CONTAINED THEREIN, this answering defendant alleges that each and every
11 cause of action is barred by the privilege embodied in California Civil Code section 47, or
12 arising under federal and/or state common law.

13 135. AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE FIRST
14 AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE OF
15 ACTION CONTAINED THEREIN, this answering defendant alleges that said complaint is
16 barred by the Doctrine of Estoppel.

17 136. AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
19 OF ACTION CONTAINED THEREIN, this answering defendant alleges that said complaint
20 is barred by the Doctrine of Laches.

21 137. AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
22 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
23 OF ACTION CONTAINED THEREIN, this answering defendant alleges that said complaint
24 is barred by the Doctrine of Unclean Hands.

25 138. AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
26 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
27 OF ACTION CONTAINED THEREIN, this answering defendant alleges that plaintiff has
28 waived and is estopped and barred from alleging the matters set forth in the complaint.

1 139. AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
2 THE FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED
3 CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that at all
4 times and places mentioned in the complaint herein, plaintiff failed to mitigate the amount of
5 her damages. The damages claimed by plaintiff could have been mitigated by due diligence
6 on her part or by one acting under similar circumstances. The plaintiff's failure to mitigate is
7 a bar to her recovery under the complaint.

8 140. AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
9 THE FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED
10 CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that
11 plaintiff was careless and negligent in and about the matters alleged in the complaint, and that
12 said carelessness and negligence on said plaintiff's own part proximately contributed to the
13 happening of the incident and to the injuries, loss and damage complained of, if any there
14 were; that should plaintiff recover damages, defendant is entitled to have the amount thereof
15 abated, reduced or eliminated to the extent that plaintiff's negligence caused or contributed to
16 her injuries, if any.

17 141. AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
18 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
19 OF ACTION CONTAINED THEREIN, this answering defendant alleges that said injuries
20 sustained by plaintiff were either wholly or in part negligently caused by persons, firms,
21 corporations or entities other than this answering defendant, and said negligence is either
22 imputed to plaintiff by reason of the relationship of said parties to plaintiff and/or said
23 negligence comparatively reduces the percentage of negligence, if any, by this answering
24 defendant.

25 142. AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
26 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
27 OF ACTION CONTAINED THEREIN, this answering defendant alleges that the alleged
28 causes of action set forth in the first amended complaint are, and each of them is, barred by

1 the applicable provisions of California Code of Civil Procedure, including but not limited to,
2 sections 335.1, 338 and 340 of the State of California.

3 143. AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
4 THE FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED
5 CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that the
6 sole and proximate cause of the incident complained of by plaintiff in her complaint was due
7 to the act and/or omissions of persons and entities other than this answering defendant..

8 144. AS AN EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
9 THE FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED
10 CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that
11 plaintiff should be denied recovery under the complaint, and each cause of action thereof,
12 because plaintiff's conduct was manifestly unreasonable.

13 145 AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
14 THE FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED
15 CAUSE OF ACTION CONTAINED THEREIN, this answering defendant alleges that its
16 conduct was not the cause in fact or the proximate cause of any of the losses alleged by
17 plaintiff.

18 146. AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE
19 FIRST AMENDED COMPLAINT ON FILE HEREIN, AND TO EACH ALLEGED CAUSE
20 OF ACTION CONTAINED THEREIN, this answering defendant alleges that it is entitled to
21 a setoff under California Code of Civil Procedure section 431.70 against any damages to
22 which plaintiff claims an entitlement based on Plaintiff's outstanding obligations.

23 147. Defendant presently has insufficient knowledge or information on which to
24 form a belief as to whether it may have additional, as yet unstated, defenses available.
25 Defendant reserves the right to assert any and all additional defenses in the event discovery
26 indicates such defenses may be appropriate.
27
28

WHEREFORE, this answering defendant prays for judgment as follows:

1. That plaintiff takes nothing by her complaint;
2. For reasonable attorney's fees and costs of suit incurred herein;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems proper.

Dated: December 21, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

By: 

J. MARK THACKER
Attorneys for Defendant
THE CBE GROUP, INC.

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Jose

JURY TRIAL DEMANDED

Defendant THE CBE GROUP, INC. hereby demands trial by jury.

Dated: December 21, 2007

ROPERS, MAJESKI, KOHN & BENTLEY

By: 

J. MARK THACKER
Attorneys for Defendant
THE CBE GROUP, INC.

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Jose